

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

76-6065 ^{VB} _{P/S}

In The
United States Court of Appeals
For the Second Circuit

CITY OF ROCHESTER and GENESEE-FINGER LAKES
REGIONAL PLANNING BOARD,

Plaintiffs-Appellants,

vs.

UNITED STATES POSTAL SERVICE and BENJAMIN F.
BAILAR, UNITED STATES POSTMASTER
GENERAL,

Defendants-Appellees.

BRIEF OF APPELLANTS

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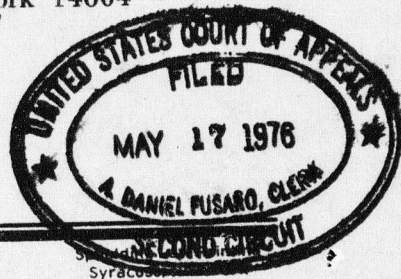


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Defendants-Appellees.

BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

This is an appeal by plaintiffs from the order and judgment of the United States District Court, Western District of New York, entered March 24, 1976 (Burke, U.S.D.J.) that denied plaintiffs' claims for relief in all respects and dismissed this action. The decision, with findings of fact and conclusions of law [Appendix,* pp. App., 133-146] is not reported.

*Hereafter, references to the trial transcript will be indicated by "Tr.", to the Appendix by "App.", and to the Exhibit Volumes by "Exb. Vol."

ISSUES PRESENTED

1. Did the United States Postal Service violate the National Environmental Policy Act of 1969 by determining that it need not prepare an environmental impact statement in connection with the construction of a General Mail and Vehicle Maintenance Facility in Henrietta, New York and the planned abandonment of the present Rochester main post office?

(The District Court answered in the negative [Conclusions of Law 1, 2, 3 and 5; App., pp. 142-144].)

2. Did the United States Postal Service violate the National Environmental Policy Act of 1969 by failing to consult and coordinate with local planning agencies in connection with its plans for the subject construction and abandonment?

(The District Court answered in the negative [Conclusions of Law 3 and 5; App., pp. 143-144].)

3. Did the United States Postal Service violate the Intergovernmental Cooperation Act of 1968 by (i) failing to notify local agencies of its plans to construct a major postal facility and to abandon the existing Rochester main post office and (ii) by failing to have those plans reviewed by local agencies?

(The District Court answered in the negative [Conclusion of Law 4; App., pp. 143-144].)

4. Do a municipal corporation and a regional planning board have standing to challenge a project by the United States Postal Service where the municipal corporation and the regional planning board assert that the project will have severe adverse environmental consequences upon the downtown area of the subject city and that the United States Postal Service failed to perform duties owed to them?

(The District Court answered in the negative [Conclusions of Law 13 & 14; App., p. 145].)

5. Are the claims of a municipal corporation and a regional planning board challenging, on environmental grounds, a project of the United States Postal Service barred by laches, where the finding of laches is grounded upon the fact that the action was commenced after construction of the challenged project was begun?

(The District Court answered in the affirmative [Conclusions of Law 11 & 12; App., p. 145].)

6. Is the United States Postal Service exempt from the provisions of the Intergovernmental Cooperation Act of 1968 by reason of Section 410 of the Postal Service Reorganization Act of 1970?

(The District Court answered in the affirmative [Conclusion of Law 6; App., p. 144].)

STATEMENT OF CASE

Nature of Case

This is a civil action in the United States District Court, Western District of New York, by which plaintiffs City of Rochester ("Rochester") and Genesee-Finger Lakes Regional Planning Board ("Planning Board") seek, among other things, a declaratory judgment that defendants United States Postal Service ("Postal Service") and Benjamin F. Bailar, as Postmaster General ("Bailar") have violated, and are continuing to violate, the National Environmental Policy Act of 1969 ("NEPA") and the Intergovernmental Cooperation Act of 1968 ("ICA") by causing the construction of a new postal facility in Henrietta, New York (a suburb of Rochester) and the consequent abandonment of the present Rochester main post office. Rochester and the Planning Board also seek a permanent injunction enjoining the Postal Service and Bailar from taking any further actions leading to the abandonment of the Rochester main post office, including, but not limited to, further con-

struction of the new facility in Henrietta, New York until such time as the Postal Service and Bailer establish that they are in full compliance with NEPA and the ICA.

More specifically, the complaint alleges that the Postal Service and Bailer have violated, and continue to violate, NEPA in these regards: (1) that the construction of the new facility and the abandonment of the Rochester main post office is a major federal action significantly affecting the quality of the human environment of Rochester and that the Postal Service was therefore required to, but failed to, prepare an environmental impact statement [Complaint, ¶ ¶ 19-26; App., pp. 5 & 6]; and (2) that the Postal Service failed to properly consult and cooperate with Rochester and the Planning Board in regard to planning and effectuating the subject project [Complaint, ¶ ¶ 27-29; App., p. 7]. Lastly, the complaint alleges that the Postal Service and Bailer have violated, and continue to violate, the ICA in that they failed to notify the Planning Board of the subject project and to have the project reviewed by the Planning Board [Complaint, ¶ ¶ 30-35; App., pp. 7-9].

Proceedings in the District Court

This action was commenced in the United States District Court, Western District of New York, by the filing, on or about January 14, 1976, of the summons and complaint [App., pp. 1-10], together with plaintiffs' motion for a preliminary injunction [App., pp. 11-124].

On the return date of plaintiffs' motion for a preliminary injunction, January 26, 1976, and after argument thereon, the Court (Burke, U.S.D.J.) denied plaintiffs' application for a preliminary injunction, by oral order, and ordered the prompt trial of the action.

The action was tried by the Court (Burke, U.S.D.J.), without a jury, on February 19, 20, 26 and 27, 1976. At the conclusion

of plaintiffs' case, on February 20, 1976, plaintiffs renewed their application for a preliminary injunction. That motion was denied, from the bench, prior to argument thereon [Tr., p. 326; App., p. 371].

Disposition by the District Court

By order dated March 23, 1976 [App., pp. 133-146], the Court issued findings of fact and conclusions of law, denied plaintiffs' demands for relief in all respects and ordered that the action be dismissed. Judgment dismissing the action [App., p. 147] was entered on March 24, 1976.

The District Court (Burke, U.S.D.J.) found, among other things, (1) that both Rochester and the Planning Board lacked standing to maintain the action [Conclusion of Law 14; App., p. 145]; (2) that the claims of both Rochester and the Planning Board were barred by laches [Conclusion of Law 12; App., p. 145]; (3) that the Postal Service is exempt from the ICA [Conclusion of Law 6; App., p. 144]; (4) that NEPA does not require the Postal Service to prepare an environmental impact statement or to consult with Rochester or the Planning Board in connection with the subject project [Conclusion of Law 3, App., p. 143]; and (5) that the Postal Service has fully complied with NEPA [Conclusions of Law 1, 2 and 5, App., pp. 142-144].

Prior Proceedings in this Court

By order dated April 26, 1976, this Court granted the motion of Rochester and the Planning Board to expedite this appeal.

Facts

Rochester is a municipal corporation authorized and existing under the laws of New York.

The Planning Board was created and exists as a regional planning board for an eight county area, pursuant to Article 12-B, New York General Municipal Law [Tr., p. 24]. At all times relevant to this action, the Planning Board itself consisted of 28 board members, who served as its policy-making body, and 16 staff members. Approximately 70% to 75% of the Planning Board's annual budget of approximately \$650,000 was derived from federal funds [Tr., pp. 25-26]. Since 1967, the Planning Board has been the designated areawide clearinghouse for purposes of Office of Management and Budget Circular A-95 (38 Fed. Reg. 32874-32880; *infra*, pp. A44-A46; hereinafter "A-95 Rules") [Tr., pp. 36-37]. Following federal guidelines and rules, and with federal funding, the Planning Board formulated, between 1968 and 1975, a Comprehensive Regional Development Plan for the area that it serves [Tr., pp. 29-35].

In approximately 1970, the Postal Service (and its predecessor, the United States Post Office) began to give active consideration to a plan to construct a general mail and vehicle maintenance facility to serve the Rochester area [Tr., pp. 340 & 545; App., p. 447].

Between 1970 and early 1974, the Postal Service completed several internal studies and reports pertaining to the location of the new facility [Exb. Vol., pp. 160-302]. During this period, the only contact between the Postal Service and either Rochester or the Planning Board regarding the proposed new postal facility was a brief inquiry, in February, 1973, by a Postal Service Realty Specialist at the Rochester Assessor's Office concerning available sites in Rochester [Tr., pp. 430-432 & 461; App. pp. 384-386 & 405].

In January, 1974, newspaper articles appeared indicating that the Postal Service was considering building the new facility on a site southwest of Rochester [Exb. Vol., pp. 43-46].

Upon learning that the Postal Service was giving consideration to building the proposed new facility and to relocate the main post office to a suburban location, Rochester Mayor Thomas Ryan formally expressed Rochester's opposition to the move in a January 28, 1974 letter to then Postmaster General Klassen [App., p. 36].

At a meeting on March 15, 1974 between officials of Rochester and of the Postal Service, held at Rochester's request, Rochester repeated its opposition, on environmental grounds, to the location of the new postal facility outside of the city [Tr., pp. 167-173; App., pp. 240-246]. At that meeting, Rochester presented the Postal Service with a study of alternative sites for the new facility within the city [Tr., p. 169; App., p. 242]. Also at that meeting, the Postal Service, for the first time, indicated that it required a site containing at least 36 acres [Tr., p. 170; App., p. 243]. Because none of the possible sites presented by Rochester was larger than 30 acres, the Postal Service declined to consider any of the alternative sites proposed by Rochester [Tr., 172; App., p. 245].

Following the March 15, 1974 meeting, Rochester continued its efforts to enter into discussions with the Postal Service with the goal of accommodating the needs of the Postal Service while keeping the main post office within the city [Tr., p. 177; App., p. 249]. The Postal Service failed to respond to Rochester's requests for information and cooperation [Tr., pp. 176 & 205; App., pp. 248 & 271].

Without additional contact with Rochester or the Planning Board, the Postal Service proceeded internally to make the final decision to construct the new facility on the Henrietta site. In fact, it appears that the final decision was made prior to October, 1973 [Exb. Vol., pp. 399-409]. Thereafter, in June,

1974, the Postal Service announced that it had "agreed to purchase" the Henrietta site [Exb. Vol., pp. 51 & 410].

There is no dispute that a new postal facility will consist of a building of approximately 366,000 square feet, to be built at a cost of approximately \$12,195,000 on a site of approximately 44 acres, acquired at a cost of approximately \$1,656,620. The site of the new facility is approximately seven miles from the present Rochester main post office.

In October, 1974, the Postal Service made a determination that no environmental impact statement was necessary in connection with the project [Tr., pp. 463-466; App., pp. 407-410 & 76-77]. That negative determination was made prior to the finalization of the environmental assessment upon which the determination was made. [Tr., pp. 469-470; App., pp. 413-414 & 40-75].

Although the Postal Service announced in June, 1974 that it had "agreed to purchase" the Henrietta site for the new facility [Exb. Vol., pp. 51 & 410], there is no evidence that the Postal Service publicly announced the actual site purchase [Tr., pp. 243-250; App., pp. 299-305], and both Rochester, in the person of its Commissioner of Community Development, and the Planning Board, by its Deputy Director and Supervisor of A-95 review, testified that they first learned that the Postal Service had finalized its plans to relocate to Henrietta by reading a newspaper report in August, 1975. That report [App., p. 95] indicated that the Postal Service had, on August 6, 1975, entered into a construction contract for the new facility. It is also clear that discussions of a general nature concerning the Postal Service matter occurred among members of the Planning Board in 1974, prior to the Board's learning that the plans of the Postal Service had been finalized [Tr., pp. 321-326; App., pp. 366-371].

It is instructive to note that the Rochester Postmaster testified that he too first learned that a concrete decision to construct the new facility in Henrietta had been made by learning of the construction contract in August, 1975 [Tr., pp. 564-569; App., pp. 466-471].

The response of both Rochester and the Planning Board to the news that a construction contract for the new facility in Henrietta had been awarded was immediate: the Rochester City Planning Commission, by mailgram dated August 8, 1975 [App., p. 39] again reiterated its opposition to the relocation; the Planning Board promptly notified the Postal Service that the project plans should be reviewed by the Planning Board pursuant to the A-95 rules and requested the Postal Service to provide the information necessary for that purpose [App., p. 96].

The Postal Service failed to respond to Rochester [Tr., p. 205; App., p. 271]. The response of the Postal Service to the Planning Board's request that the project be reviewed under the A-95 rules was as follows:

In telephone conversations between Mr. John Kenyon, General Manager, Real Estate Division, Postal Service Eastern Region and Ms. Margaret Ely of the Planning Board, the Postal Service indicated (i) that it would provide the information needed by the Planning Board to conduct an A-95 Review [Tr., pp. 109-110; App., pp. 196-197]; (ii) that the Postal Service considered itself subject to A-95 Review for buildings over 20,000 square feet in size [Tr., p. 114; App., p. 201]; (iii) that construction of the new facility would begin in late October or early November, 1975 [Tr., pp. 115-116; App., pp. 202-203]; and (iv) that the present Rochester main post office was to be disposed of upon completion of the new facility [Tr., p. 118; App., p. 205]. By letter dated September 10, 1975, the Postal Service, by Mr. Kenyon, provided cursory data pertaining to the new facility and indicated that the site selection was based primarily on operational cost factors [App., p. 35]. By letter dated November 13, 1975, the Postal Service, again by Mr. Kenyon, provided additional information and again advised the Planning Board that the Rochester main post office would be disposed of as surplus by the Postal Service [App., pp. 104-107].

On November 19, 1975, the Planning Board, after receiving comments disapproving the Postal Service's plans from the Town of Henrietta [Exb. Vol., p. 10], the County of Monroe Department of Planning [App., pp. 100-101] and the Rochester City Planning Commission, [App., pp. 102-103], denied approval of the subject project and communicated that disapproval to the Postal Service [App., pp. 98-99 & 108].

This action was commenced on or about January 14, 1976.

SUMMARY OF ARGUMENT

Both actions of the Postal Service here under review, its determination not to prepare an environmental impact statement and its failure to consult and cooperate with local agencies, were arbitrary, capricious, an abuse of discretion and in violation of NEPA and the rules and regulations thereunder promulgated.

Likewise, the fact that the Postal Service wholly ignored local planning considerations and agencies in effectuating the subject project requires a holding that the Postal Service also violated the ICA.

Moreover, there is no impediment to full consideration of the merits of the claims of Rochester and the Planning Board — the District Court's determinations that Rochester and the Planning Board lack standing, that their claims are barred by laches, and that the Postal Service is exempt from compliance with the ICA are erroneous as a matter of law.

Therefore, Rochester and the Planning Board are entitled to the declaratory judgment and the permanent injunction demanded in the complaint.

POINT I

No legal barrier prevents full consideration of the claims asserted by Rochester and by the Planning Board.

In dismissing this action after trial, the District Court concluded (1) that Rochester and the Planning Board lack standing to maintain this action, (2) that the action is barred by laches of both Rochester and the Planning Board, (3) that the claims of injury are speculative and remote, and (4) that the Postal Service is exempt from compliance with the ICA [Conclusions of Law; App., pp. 142-146]. Each of these conclusions is, for the reasons set forth below, erroneous as a matter of law.

A. Both Rochester and the Planning Board have standing to maintain this action.

The applicable standard is simply stated — a plaintiff has standing to maintain an action if (1) “the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise” and (2) “the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 152-153 (1970).

In actions challenging agency action, Section 10 of the Administrative Procedure Act (5 U.S.C. §702) codifies the standing requirement as follows:

“§702. Right of Review — A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”

The Supreme Court has addressed the issue of standing in actions challenging agency actions as violative of NEPA on at least two occasions. In *Sierra Club v. Morton*, 405 U.S. 727 (1972) the Court reiterated the “injury in fact” and “zone of

interests" tests set forth in *Data Processing*, and specifically held that allegations of environmental injury are sufficient to meet the injury in fact test, if plaintiff himself will suffer the alleged injury:

"Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that the particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process. But the 'injury in fact' test requires more than an injury to a recognizable interest. It requires that the party seeking review be himself among the injured." 405 U.S. at 734-35

In *United States v. SCRAP*, 412 U.S. 669 (1973), the Court held that members of an unincorporated association had standing to challenge an I.C.C. order where the plaintiffs contended that the order would allow increased freight rates, that the increased freight rates would discourage recycling, and that the result would be damage to recreational areas used by plaintiffs. The Court sustained the standing of the plaintiffs, despite the indirect nature of the environmental claims asserted.

In this action, the environmental claims are anything but indirect. Rochester asserts that the construction of the new facility and the abandonment of the Rochester main post office will necessarily have a serious adverse impact on the human environment of Rochester by eliminating accessible employment opportunities in Rochester and by increasing urban blight, decay and social problems in the downtown Rochester area [Tr., pp. 170-172; App., pp. 243-245 & 16-19].

There can be no serious question that a city has standing to challenge an action by a federal agency where the city asserts that environmental damage to the city will be the direct result of the agency action.

SEE ALSO:

City of Boston v. Volpe, 464 F.2d 254 (1st Cir. 1972);

Groton v. Laird, 353 F.Supp. 344, 348 (D.Conn. 1972)

Similarly, the Planning Board asserts that the ICA, and the A-95 Rules thereunder promulgated, compel the Postal Service to submit direct development federal projects to it, as the designated areawide clearing house, for purpose of A-95 review. (A-95 Review, as more fully discussed *infra.* at pp. 29-32, is the process by which, among other things, consistency of federal developments with local and regional plans is measured.) The fact that the Postal Service failed even to notify the Planning Board of its plans, and certainly failed to take any steps to effectuate A-95 Review prior to finalizing its plans and committing resources to the project, is not disputed. [Tr. pp. 42 & 129; App., p. 216]. The Planning Board has, therefore, alleged both an "injury in fact" (the Postal Service's breach of a duty owed to the Planning Board) and an injury within the "zone of interests" (review of the subject project to determine consistency with regional plans) specifically established in favor of the Planning Board by the ICA and the A-95 Rules.

The conclusion of the District Court that Rochester and the Planning Board lack standing to maintain this action is erroneous and must be reversed.

B. *Neither Rochester nor the Planning Board is guilty of laches.*

The District Court concluded that both Rochester and the Planning Board were guilty of laches. That conclusion was grounded upon, apparently, three determinations: (1) that both Rochester and at least one member of the Planning Board were aware, in early 1974, that the Postal Service was considering plans to relocate the area's major postal facility from Rochester

to a suburban location, (2) that the Postal Service announced, in June, 1974, that it had agreed to purchase the Henrietta site and (3) that construction of the facility started in August 1975, before this action was commenced, in January 1976.

This Court has held that the important public policy underlying NEPA compels a very high threshold of prejudice to defendants to sustain a defense of laches. *Steubing v. Brinegar*, 511 F.2d 489, 495 (2nd Cir. 1975). Likewise, this Court recognized in *Steubing* that:

"... positive developments are usually required to galvanize opposition to a project . . . and to motivate a group of citizens to hire a lawyer to see if there is a legal basis for challenging all, or part of the proposed construction. [citation]"

* * * *

"The plaintiffs had a right to assume that federal officials would comply with applicable law" 511 F.2d at 495.

Similarly, Judge Friendly, writing for a unanimous three-judge court in *City of New York v. United States*, 337 F. Supp. 150, 160 (E.D.N.Y. 1972, three-judge court) stated:

"The tardiness of the parties in raising the issue cannot excuse compliance with NEPA; primary responsibility under the Act rests with the agency. [citations]"

Application of these standards leads inescapably to the conclusion that Rochester and the Planning Board cannot properly be found to be guilty of laches.

The proper date for measuring alleged delay in commencing this action is August, 1975, the date when the Postal Service publicly announced that it had entered into a construction contract for the new facility in Henrietta. Prior to that date, the Postal Service gave no public indication that its plans to relocate to Henrietta had been finalized. In fact, even the Rochester

Postmaster testified that he first learned that a final decision had been made when the contract was let. [Tr. pp. 564-569; App., pp. 466-471].

The District Court, in finding laches, placed heavy reliance upon the fact that a Planning Board member and Rochester's Commissioner of Community Development knew, in early 1974, that the Postal Service was considering relocating to Henrietta. It is clear, however, that at that time no final decision had been made public and that the objections of Rochester to the move of the main post office to a suburban location were known by the Postal Service [App., p. 10; Exb. Vol., pp. 43-46].

Moreover, the law is clear that the Postal Service had the affirmative duty to notify Rochester and the Planning Board of its plans and to take steps to cooperate and consult with them. The District Court and the Postal Service, by emphasizing various newspaper articles and correspondence of a general nature as somehow putting Rochester and the Planning Board on "constructive notice" of the Postal Service's plans [Tr., pp. 89-101] have attempted to reverse these duties.

Likewise, the start of construction cannot support a finding of laches. Rochester repeated its previously voiced and strenuous objections to the Postal Service in August, 1975 [App., p. 39]. The Planning Board requested information and A-95 review in August, 1975 [App., p. 96]. The Postal Service testified that the construction contract could have been terminated in August, 1975 [Tr., p. 475; App., p. 419].

Instead of meeting its statutory obligations of cooperation, as Rochester and the Planning Board were entitled to assume that it would, *Steubing, supra*, the Postal Service proceeded with construction and failed to respond in any meaningful way to either the Planning Board's request that the project be reviewed under the A-95 Rules or to Rochester's objections. In fact, it

appears that Rochester and the Planning Board first contemplated legal action in November, 1975, when it became clear that the Postal Service would proceed with construction without cooperation with Rochester and the Planning Board. [Tr., pp. 199 & 267].

C. A justiciable controversy exists regarding the abandonment of the Rochester main post office.

Prior to the commencement of this action, the Postal Service indicated to the Planning Board on at least two occasions that abandonment of the Rochester main post office would follow upon completion of the Henrietta facility [Tr., pp. 118 & 125; App., pp. 205 & 212]. The Postal Service's intention to use the new facility as the area's main post office and to abandon the present Rochester main post office appears also in the environmental assessment [Assessment, p. 3.1; App. p. 56] and from public utterances of Postal Service officials prior to commencement of this action [App., pp. 86 & 87; Exb. Vol., pp. 43 & 53]. The Postal Service, by its amended answer in this action, [Amended Answer; App., p. 131] asserts that the main post office will not be abandoned and that no justiciable controversy exists.

At trial, the Postal Service testified regarding the present Rochester main post office as follows: (1) that the disposition of the present main post office was a "Regional determination out of Philadelphia" [Tr., p. 422] (the author of the letter dated November 13, 1975 stating that the main post office would be abandoned is Mr. Kenyon, Postal Service General Manager, Real Estate Division Eastern Region, Philadelphia [App., pp. 104-107]; (2) that the Postal Service will utilize about 25% of the main post office after the Henrietta facility is completed [Tr. p. 558; App., p. 460]; and (3) that no decision has yet been made regarding the present main post office [Tr. pp. 562-563; App., pp. 464-465].

Both a weighing of the credible evidence and application of fundamental logic compel the conclusion that the Postal Service clearly intends to abandon the Rochester main post office upon completion of the new facility. The present controversy is plainly ripe for decision, and now is the proper time to determine the claims herein asserted.

D. The Postal Service must comply with the Intergovernmental Cooperation Act of 1968.

The District Court's conclusion that Section 410 of the Postal Reorganization Act of 1970 (39 U.S.C. §410) exempts the Postal Service from the requirements of the ICA is erroneous as a matter of law, as a matter of statutory construction, and as a matter of logic. Section 410 provides, in relevant part, as follows:

Section 410. Application of other statutes.

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) The following provisions shall apply to the Postal Service:

(1) section 552 (public information), section 3110 (restrictions on employment of relatives), section 3333 and chapter 71 (employee policies) and 73 (suitability, security, and conduct of employees), and section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or sections shall apply to the Postal Service unless expressly made applicable;

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 258a-258e (relating to condemnation proceedings);

(B) sections 270a-270e (known as the Miller Act, relating to performance bonds);

(C) sections 276a-276a-7 (known as the Davis-Bacon Act, relating to prevailing wages);

(D) section 276c (relating to wage payments of certain contractors);

(E) chapter 5 (the Contract Work Hours Standards Act); and

(F) chapter 15 (the Government Losses in Shipment Act);

(5) the following provisions of title 41:

(A) sections 35-45 (known as the Walsh-Healey Act, relating to wages and hours); and

(B) chapter 6 (the Service Contract Act of 1965); and

(6) sections 2000d, 2000d-1-2000d-4 of title 42 (title VI, the Civil Rights Act of 1964).

In *Chelsea Neighborhood Assns. v. U.S. Postal Service*, 516 F.2d 378 (2nd Cir. 1975), this Court concluded that Section 410 of the Postal Reorganization Act did not exempt the Postal Service from compliance with NEPA, even though NEPA is not listed in subsection (b) of Section 410 as a statute to which the Postal Service is subject. The reasoning in *Chelsea* pertaining to NEPA, we submit, provides equally sound foundation for the conclusion that the Postal Service must comply with ICA.

This is especially true since Section 101 of the ICA (42 U.S.C. §4201) specifically includes "all instrumentalities of the executive branch" within the definition of agencies subject to the ICA.

In rejecting the Postal Service's contention that it was exempt from NEPA, this Court in *Chelsea* compared the policy underlying NEPA with the policy underlying the Postal Reorganization Act, and found that the purpose of the Postal Reorganization Act was managerial — to free the Postal Service from the shackles of the past and to allow it to operate in a businesslike way (516 F.2d at 383). In contrast, this Court found NEPA to be policy oriented (516 F.2d at 384) and concluded that the Postal Reorganization Act could not be construed so as to override the recently enacted national environmental policies set forth in NEPA. In short, this Court held that the important environmental policies set forth in NEPA were not enactments pertaining to "contracts, property, works, officers, employees, budgets or funds" from which the Postal Service was rendered exempt by Section 410.

Similar reasoning compels the conclusion that Section 410 does not exempt the Postal Service from compliance with the ICA. Like NEPA, the ICA is policy oriented, its declared purpose being to set forth "a policy recognizing the importance of the sound and orderly development of all areas within the Nation, both urban and rural", and to provide "as a matter of congressional policy, that agencies, to the extent possible, will take into account all viewpoints — National, Regional, State and Local — in the formulation and administration of [federal and federally assisted] projects." H.R. Rep. No. 1845; 3 U.S. Code Cong. & Adm. News, 90th Cong., 2nd Sess. 1969, 4226-4227. The managerial purposes of Section 410 cannot be properly found to emasculate the policies supporting the ICA.

The chronological legislative history of the ICA, like the history of NEPA, supports the position that Section 410 does

not exempt the Postal Service from the provisions of the ICA. The ICA was passed by the Congress in October, 1968, a mere three months before the genesis of the Postal Reorganization Act. 3 U.S. Code Cong. & Adm. News, 90th Cong., 2nd Sess. 1969, 4220; 516 F.2d at 384. The ICA cannot then be found to be one of the ancient and outmoded statutes from which the Postal Service was to be freed by Section 410.

Sound reasoning and proper statutory analysis necessitate a finding that the Postal Service must comply with the ICA.

POINT II

The Postal Service has violated, and now stands in violation of, the National Environmental Policy Act of 1969.

The role of this Court on this appeal, we submit, is well-defined — to “identify the agency action to be reviewed, determine the applicable standard of review, and decide whether it has been met.” *Hanly v. Mitchell* (Hanly I), 460 F.2d 640, 644 (2nd Cir. 1972), *cert. denied*, 409 U.S. 990 (1972). Likewise, we recognize that the standard of review is that the agency action must be shown to have been “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Hanly v. Kleindienst* (Hanly II), 471 F.2d 823, 829 (2nd Cir. 1972), *cert. denied* 412 U.S. 908 (1972), quoting Justice Marshall in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

In view of these standards, Rochester and the Planning Board contend (1) that the determination by the Postal Service not to prepare an environmental impact statement was arbitrary and capricious and in violation of Section 102(2)(c) of NEPA and (2) that the failure of the Postal Service to consult and coordinate with Rochester and/or the Planning Board was arbitrary and capricious, and in violation of Sections 101 and 102(2)(A), (B) and (D) of NEPA.

A. *The failure of the Postal Service to prepare an environmental impact statement is violative of Section 102(2)(C) of NEPA.*

The statutory pattern and the important underlying policies of NEPA are now well-known and have been frequently addressed by this Court. The legislative history and the supporting policies underlying NEPA, as well as a section-by-section analysis, by Circuit Judge J. Skelly Wright is contained in *Calvert Cliffs' Coord. Comm. v. A.E.C.*, 449 F.2d 1109 (D.C. Cir. 1971). Therefore, we will set forth here only a brief stretch of the applicable provisions of NEPA and the relevant rules and regulations promulgated thereunder. (The full text of NEPA is set out *infra*, at pp. A1-A9).

Section 102(2)(C) of NEPA (42 U.S.C. §4332(2)(C)) is perhaps the most substantive, and surely the most specifically compulsory section of NEPA's generally broad policy statement. In essence, it requires all federal agencies to prepare a detailed environment impact statement ("EIS") in connection with all "major Federal actions significantly affecting the quality of the human environment".

Section 102 (42 U.S.C. §4332)

The Congress authorizes and directs that, to the fullest extent possible: the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code and shall accompany the proposal ~~through~~ the existing agency review processes;

Perhaps as important as the substantive provisions of NEPA itself, is the fact that NEPA (Section 202; 42 U.S.C. §4342) also created the Council on Environmental Quality ("CEQ") to assist in the effectuation of the policies enunciated in NEPA. Pursuant to Executive Order 11514 (35 Fed. Reg. 4247-4248; *infra*, pp. A16-A20), the Council of Environmental Quality promulgated Guidelines for the preparation of EIS's that both (1) guide agencies in determining when an EIS is necessary and assist agencies in their preparation of EIS's and (2) direct agencies to establish and monitor their own internal procedures in those respects. (The Guidelines appear, in part, at pages A10-A15 hereof). The Postal Service has prepared such internal regulations, although the Postal Service regards itself as exempt from compulsory compliance with NEPA. (Postal Service

Regulations §775.1 (b); *infra*, at pp. A22-A23). (The Postal Service Regulations, 39 C.F.R. §775, appear, in part, at pages A21-A29 hereof).

Rochester and the Planning Board assert that the determination by the Postal Service not to prepare an EIS in connection with the subject facility was arbitrary, capricious and in violation of NEPA, Executive Order 11514, the CEQ Guidelines and the Regulations of the Postal Service itself.

There is no dispute that the Postal Service did not prepare an EIS pertaining to the construction of the new General Mail and Vehicle Maintenance Facility in Henrietta [App., pp. 76 & 77]. Likewise, due to the extensive scope of the subject Postal Service project there can be no dispute that this project is a major federal action.

Rochester and the Planning Board assert that the construction of the new facility will have a significant effect upon the quality of the human environment of Rochester because the present Rochester main post office is to be abandoned upon completion of the new facility (See: *supra*, at pp. 16-17). That abandonment, it is asserted, will have a blighting impact upon the downtown area, will reduce accessible employment opportunities to lower income residents of the area, and will increase crime and other social problems in the area by the decaying influence of the abandoned building. [Tr., pp. 170-172; App., pp. 243-245 & 16-19].

In contrast, the Postal Service contended, and the District Court concluded, that the "construction of the new facility in Henrietta is separate and apart from the abandonment of the Main Post Office in the City of Rochester." [Conclusion of Law 7; App., p. 144]. Moreover, the District Court concluded that the claims of Rochester and the Planning Board were of "social" and "economic" injury, and that, therefore, "the controls of the National Environmental Act [sic]" were not "actuate[d]".

[Conclusion of Law 13; App., p. 145]. Both of these conclusions are erroneous as a matter of law.

Standards for determining when a project must be found to have a "significant effect" can be found in decisions of this Court, decisions of other Courts of Appeal, the CEQ Guidelines and the Postal Service Regulations. Under all of these standards, the Postal Service project here at issue must be said to have a significant effect upon Rochester's environment (SEE: *infra*, pp. 25-27).

As to the conclusion that the abandonment of the Rochester main post office is a separate issue, both the case law and the CEQ Regulations clearly require consideration of the overall impact of the project. To allow agencies to segment projects into smaller components would allow unlawful avoidance of NEPA responsibilities. *Sierra Club v. Morton*, 514 F.2d 856 (D.C. Cir. 1975); CEQ Regulations at §1500.6(a); *infra*, pp. A13-14.

Moreover, the conclusion that "social" and "economic" injuries are not the subject of consideration under NEPA cannot stand. "Environment" has consistently been given a broad meaning by Courts construing NEPA.

In *Hanly I, supra*, this Court recognized that "environment" must be defined to encompass all factors comprising "the quality of life for city residents":

"[The environmental considerations of NEPA] extend beyond sewage and garbage and even beyond water and air pollution. [citations] The Act must be construed to include protection of the quality of life for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban 'environment' . . . 460 F.2d at 647."

A recent decision of this Court, *Trinity Episcopal School Corp. v. Romney*, 523 F.2d 88, 93 (2nd Cir. 1975) catalogs the urban factors that must be addressed:

"... federal agencies must consider the following urban factors ...: site selection and design; density; displacement and relocation; quality of the built environment; impact of the environment on current residents and their activities; decay and blight; implications for the city growth policy; traffic and parking; noise; neighborhood stability; and the existence of services and commercial enterprises to service the new residents."

That "human factors" must be considered in determining whether a project will significantly affect the environment is emphasized also in *Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693,698 (2nd Cir. 1972); *Chelsea, supra*, at 516 F.2d 388-389; *Environmental Defense Fund v. Froehlke*, 477 F.2d 1033, 1035 (8th Cir. 1973) and *First National Bank of Chicago v. Richardson*, 484 F.2d 1369, 1377 (7th Cir. 1973).

It is equally clear that the abandonment of a facility having a significant effect upon the environment of the abandoned area requires that an EIS be prepared. *City of New York v. United* 337 F.Supp. 150 (E.D.N.Y. 1972, three-judge court) involved a challenge to an I.C.C. order allowing abandonment of 1.8 miles of railway track in New York City. Plaintiffs there claimed that the abandonment would increase truck traffic in the City to the detriment of the City's environment. The Court held an EIS necessary to proper consideration of the application to abandon. *In Accord: Harlem Valley Transportation Assn. v. Stafford*, 500 F.2d 328 (2nd Cir. 1974).

Clearly the claims of injury asserted by Rochester and the Planning Board as a result of the abandonment of the Rochester main post office are within the environmental considerations of NEPA.

In *Hanly II, supra*, this Court undertook the difficult task of establishing objective standards to determine if the environmental effect of a project was "significant" so as to trigger

Section 102(2) (C) duties. The Court expressed two tests in determining significance:

"... (1) The extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, and (2) the absolute quantitative adverse environmental effects of the action itself . . .," 471 F.2d at 830."

It is obvious that in this action the abandonment of the main post office will have severe adverse effects for the downtown Rochester area far in excess of the continued operation of the facility. In fact, abandonment of the facility, located within an urban renewal area containing much low income housing [Tr., pp. 157-168] may well be "the straw that breaks the back of the environmental camel." 471 F.2d at 831.

Rochester and the Planning Board submit that it is necessary to conclude that the challenged Postal Service project, when properly considered as a whole, will have a significant effect upon the human environment of Rochester and that the Postal Service was required by NEPA to prepare an EIS in connection with the project.

It is equally clear that the Postal Service gave no consideration whatsoever to the environment of Rochester in determining that no EIS was necessary [Assessment, p. 5.1; Tr., pp. 526-535; App., p. 71]. That fact alone is sufficient to establish that the Postal Service acted arbitrarily and capriciously, *Hanly I*, at 460 F.2d 648:

"... it is 'arbitrary and capricious' for an agency not to take into account all relevant factors in making its determination. *Citizens to Preserve Overton Park, Inc. v. Volpe*. . . 401 U.S. at 416 . . ."

In Accord:

Hanly II, supra, at 471 F.2d 826;

Maryland-National Capital Park Comm. v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973).

Lastly, Rochester and the Planning Board note that the CEQ Guidelines (§1500.6(a)) and the Postal Service Regulations (§775.4(a)(4)), *infra*, pp. A13-A14 & A27, establish that an EIS must be prepared in connection with any project likely to be environmentally controversial. In this case, Rochester notified the Postal Service in January, 1974 that it strenuously objected to a relocation of the main postal facility to the suburbs [App., p. 36]. Other protests were also lodged with the Postal Service in early 1974 [App., pp. 78-80]. This environmental controversy alone is enough to mandate the preparation of an EIS.

The subject controversial project will plainly have a significant effect upon the human environment of Rochester, a fact that the Postal Service wholly ignored in determining that no EIS was required. That determination must be found by this Court to be arbitrary and capricious.

B. The failure of the Postal Service to consult and coordinate with Rochester and/or the Planning Board is violative of Sections 101 and 102(2) (A), (B) and (D) of NEPA.

The District Court concluded that NEPA "does not require referral of the proposed plan to other federal, state or local agencies for review unless a detailed [EIS] is required." [Conclusion of Law 3; App., p.143]. That conclusion is contrary to both the policy of NEPA and to decisions of this Court and, therefore, cannot stand. The failure by the Postal Service to notify Rochester and/or the Planning Board of its plans, and to receive their input, is a violation of NEPA.

Section 101(a) of NEPA (42 U.S.C. §4331(a)) expressly mandates federal agency "cooperation with State and local governments, and other concerned public and private organizations". Likewise, Sections 102(2)(A), (B) & (D) (42 U.S.C. §4332(2) (A) (B) & (D)) plainly contemplate agency disclosure and cooperation:

The Congress authorizes and directs that, to the fullest extent possible: the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall —

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environment design arts in planning and in decision-making which may have impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

The CEQ Regulations likewise require federal agency cooperation prior to a determination of significant impact. (SEE: CEQ Regulations at §1500.2(b), *infra* at p. A-11).

These duties of cooperation obtain prior to a finding that an EIS is required. *Hanly II, supra*, at 471 F.2d 834-836:

"... before a preliminary or threshold determination of significance is made the responsible agency must give notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency's threshold decision. We do not suggest that a full-fledged formal hearing must be provided ... although ... in many cases such a hearing would be advisable ..." 471 F.2d at 836."

In Accord:

City of New York, supra, at 337 F.Supp. 158:

"... the obligation of a federal agency to adhere to [102(2)(A), (B) & (D)] in all instances is essentially unqualified."

In this case, the Postal Service, rather than affirmatively inform, resolutely refused requests for information and cooperation. Rochester, as early as March, 1974, sought site selection information from the Postal Service so that discussions could be had in an attempt to accommodate the needs of the Postal Service and the needs of Rochester [Tr., p. 177; App., pp. 249 & 37]. That request, and others, were completely ignored [Tr., p. 205; App., p. 271]. Similarly, the Postal Service never notified the Planning Board of its plans and never requested that the Planning Board review those plans under the A-95 Rules [Tr., p. 129; App., p. 216].

If NEPA is to continue to have vitality and usefulness as "an environmental full disclosure law", *Monroe County, supra*, at 472 F.2d 697, the actions of the Postal Service in totally ignoring the expressed environmental concerns of the locality affected must be found to constitute a violation of NEPA.

POINT III

The Postal Service has violated, and now stands in violation of, the Intergovernmental Cooperation Act of 1968.

The policy of the ICA is consistent with and similar to that of NEPA:

Section 401[42 U.S.C. §4231]

(a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of

rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of smaller communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.

Also like NEPA, the ICA contains specific procedural mandates to assure that the policies therein expressed receive practical application.

Section 401[42 U.S.C. §4231]

(b) All viewpoints — national, regional, State, and local — shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formation, evaluation and review.

(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(d) Each Federal department and agency administering a development assistance program shall, to

the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

Again like NEPA, executive regulations provide the guidelines for day-to-day compliance with the ICA. In the case of ICA, the effecting regulations are contained in Office of Management and Budget Revised Circular A-95 (38 Fed. Reg. 32874 et.seq.; *infra*, in part, at pp. A44-A46).

Consistent with the definitional section of the ICA (Section 101; 42 U.S.C. §4201), the A-95 Rules are applicable to any "instrumentality in the executive branch."

Part II of the A-95 Rules, *infra*, at pp. A45-A46, mandates that federal agencies notify the designated areawide planning and development clearinghouse of the agency's proposed development plans so that they may be coordinated with areawide and local plans. The Postal Service Regulations, even though they indicate that compliance with NEPA by the Postal Service is voluntary and ignore the ICA (Postal Service Regulations at 39 C.F.R. §775.1(b); *infra*, at pp. A22-A23), recognize that it is "advisable" to consult with the regional clearinghouses (Postal Service Regulations at 39 C.F.R. §775.6(a); *infra*, at pp. A28-A29).

The following facts establish that the Postal Service has completely ignored, and even misled the Planning Board in this case and has therefore violated the ICA, the A-95 Rules and even its own regulations: The Postal Service finalized its plans to relocate to Henrietta in approximately October, 1973 [Exb. Vol., pp. 399-409]; the Planning Board learned of the Postal

Service's plans, not from the Postal Service, but from a newspaper article indicating that a construction contract had been awarded [Tr., p. 42; App., p. 95]; the Postal Service took no steps whatever to effectuate A-95 Review [Tr., p. 129; App., p. 216]; the subject project is directly at odds with the federally sponsored Planning Board Comprehensive Regional Development Plan [Tr., pp. 32-35; Exb. Vol., pp. 2-6]; the Postal Service, in September, 1975 informed the Planning Board that construction would begin in October or November, 1975 [Tr., p. 115-116; App., pp. 202-203]; the Postal Service now asserts delay in bringing this action because construction began in August, 1975 [Amended Answer, ¶ 12; App., p. 130]; and the Postal Service has admitted that it is subject to A-95 Review [Tr. pp. 114-115; App., pp. 201-202 & Exb. Vol., p. 12].

The Postal Service has violated, and is now in violation of, the ICA.

POINT IV

Rochester and the Planning Board are entitled to the requested declaratory judgment and injunctive relief.

Previous portions of this brief, we submit, establish the breach by the Postal Service and Bailer of NEPA and of the ICA and establish that Rochester and the Planning Board are entitled to a declaratory judgment to that effect. Rochester and the Planning Board have demanded an injunction against "any further actions leading to the abandonment of the Rochester main post office, including, but not limited to, further construction of the new facility . . ." until compliance with NEPA and the ICA is established [Complaint, pp. 9 & 10; App., pp. 9 & 10]. We submit that they are entitled to that relief.

Again, the general rule is simply stated, *Beacon Theaters v. Westover*, 359 U.S. 500, 506-507 (1959):

"The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies. [citations]"

Rochester and the Planning Board, by establishing their right to a declaratory judgment have shown their exposure to irreparable environmental harm. The nature of the claims asserted is itself adequate to show the inadequacy of a legal remedy. *Environmental Defense Fund, supra*, at 477 F.2d 1037:

"We recognize that the injunction is the vehicle through which the congressional policy behind NEPA can be effectuated, and that a violation of NEPA in itself may constitute a sufficient demonstration of irreparable harm to entitle a plaintiff to blanket injunction relief. [citations]"

Moreover, it is well-established that injunctive relief is necessary and appropriate to enforce compliance with NEPA's procedural mandates, regardless of predictions as to the ultimate decision to be reached after compliance, *City of New York, supra*, at 337 F.Supp. 160:

"To permit an agency to ignore its duties under NEPA with impunity because we have serious doubts that its ultimate decision will be affected by compliance would subvert the very purpose of the Act and encourage further administrative laxity in this area.... In any event, preservation of the integrity of NEPA necessitates that the [agency] be required to follow the steps set forth in Section 102, even if it now seems likely that those steps will lead it to adhere to the present result."

In Accord:

Hanly I, supra, at 460 F.2d 648;

Hanly II, supra, at 471 F.2d 840.

The fact that construction of the new facility has begun does not alter the conclusion that the requested injunction is proper. In simplest terms, any increased costs and delays that may result from compliance with NEPA and the ICA now, rather than prior to commencement of construction, must be laid at the doorstep of the Postal Service, rather than Rochester and the Planning Board. The Postal Service, it has been established, was well aware of the concerns and objections which are the subject of this action many months before the start of construction [App., pp. 36-37 & 78-85; Exb. Vol., pp. 17-19]. The Postal Service cannot be heard to argue that because it consistently ignored NEPA and the ICA in the past, and forged ahead with construction of the challenged project in the face of environmental objections, the fact that construction is now underway excuses compliance with NEPA and the ICA for all times.

Moreover, the fact that construction of the new facility in Henrietta has commenced adds support to the assertion that an injunction enjoining further construction pending compliance with NEPA and the ICA is necessary, for it is evident that, as a practical matter, the nearer the new facility approaches completion, the less likely it becomes that serious considerations will be given to alternatives. *Steubing, supra*, at 511 F.2d 497:

"Without preliminary injunction relief construction might well reach the stage of completion where for economic and other reasons it would be impossible to turn back or alter the project in light of what an EIS revealed, and thus the environment might thereby be irreparably damaged."

If, however, this Court should conclude that the balancing of equities precludes injunctive relief including cessation of all further construction, Rochester and the Planning Board assert that all that has gone before establishes that they are entitled, at the very minimum, to a mandate requiring the preparation of an EIS and good faith cooperation and consultation with Rochester

and the Planning Board prior to any abandonment by the Postal Service of the Rochester main post office.

CONCLUSION

Rochester and the Planning Board are entitled to (1) a declaratory judgment that the Postal Service has violated, and is now in violation of, the National Environmental Policy Act of 1969 and the Intergovernmental Cooperation Act of 1968 and (2) an injunction precluding any additional steps leading to the abandonment of the Rochester main post office until compliance with the National Environmental Policy Act of 1969 and the Intergovernmental Cooperation Act of 1968 is established.

Dated: Rochester, New York
May 14, 1976

Respectfully submitted,

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APPENDIX

STATUTES AND REGULATIONS INVOLVED

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PUBLIC LAW 91-190; 83 STAT. 852

[S. 1075]

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "National Environmental Policy Act of 1969".

PURPOSE

Sec. 2. [42 U.S.C. §4321] The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. [42 U.S.C. §4331] (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new

National Environmental Policy Act of 1969

and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

National Environmental Policy Act of 1969

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. [42 U.S.C. §4332] The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,

National Environmental Policy Act of 1969

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

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(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. [42 U.S.C. §4333] All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. [42 U.S.C. §4334] Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. [42 U.S.C. §4335] The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

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TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. [42 U.S.C. §4341] The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. [42 U.S.C. §4342] There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and

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attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. [42 U.S.C. §4343] The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. [42 U.S.C. §4344] It shall be the duty and function of the Council—

- (1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

- (2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

- (3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

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(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. [42 U.S.C. §4345] In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not

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unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. [42 U.S.C. §4346] Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. [42 U.S.C. §4347] There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

**COUNCIL ON ENVIRONMENTAL QUALITY
PREPARATION OF ENVIRONMENTAL
IMPACT STATEMENTS: GUIDELINES
38 FED. REG. 20550-20562 (AUGUST 1, 1973)**

§ 1500.1 Purpose and authority.

(a) This directive provides guidelines to Federal departments, agencies, and establishments for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment as required by section 102(2) (C) of the National Environmental Policy Act (P.L. 91-190, 42 U.S.C. 4321 et. seq.) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 FR 4247) of March 5, 1970, that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs to protect and enhance environmental quality. Agencies are required to view their actions in a manner calculated to encourage productive and enjoyable harmony between man and his environment, to promote efforts preventing or eliminating damage to the environment and biosphere and stimulating the health and welfare of man, and to enrich the understanding of the ecological systems and natural resources important to the Nation. The objective of section 102(2) (C) of the Act and of these guidelines is to assist agencies in implementing these policies. This requires agencies to build into their decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed action in order that adverse environmental effects may be avoided or minimized and environmental quality previously lost may be restored. This directive also provides guidance to Federal, State, and local agencies and the public in commenting on statements prepared under these guidelines.

(b) * * *

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§ 1500.2 Policy.

(a) As early as possible and in all cases prior to agency decision concerning recommendations or favorable reports on proposals for (1) legislation significantly affecting the quality of the human environment (see §§ 1500.5(i) and 1500.12) (hereafter "legislative actions") and (2) all other major Federal actions significantly affecting the quality of the human environment (hereafter "administrative actions"), Federal agencies will, in consultation with other appropriate Federal, State and local agencies and the public assess in detail the potential environmental impact.

(b) Initial assessments of the environmental impacts of proposed action should be undertaken concurrently with initial technical and economic studies and, where required, a draft environmental impact statement prepared and circulated for comment in time to accompany the proposal through the existing agency review processes for such action. In this process, Federal agencies shall: (1) Provide for circulation of draft environmental statements to other Federal, State, and local agencies and for their availability to the public in accordance with the provisions of these guidelines; (2) consider the comments of the agencies and the public; and (3) issue final environmental impact statements responsive to the comments received. The purpose of this assessment and consultation process is to provide agencies and other decisionmakers as well as members of the public with an understanding of the potential environmental effects of proposed actions, to avoid or minimize adverse effects wherever possible, and to restore or enhance environmental quality to the fullest extent practicable. In particular, agencies should use the environmental impact statement process to explore alternative actions that will avoid

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or minimize adverse impacts and to evaluate both the long- and short-range implications of proposed actions to man, his physical and social surroundings, and to nature. Agencies should consider the results of their environmental assessments along with their assessments of the net economic, technical and other benefits of proposed actions and use all practicable means, consistent with other essential considerations of national policy, to restore environmental quality as well as to avoid or minimize undesirable consequences for the environment.

§ 1500.3 Agency and OMB procedures.

(a) Pursuant to section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102(2) (C) of the Act. Previous guidelines of the Council directed each agency to establish its own formal procedures for (1) identifying those agency actions requiring environmental statements, the appropriate time prior to decision for the consultations required by section 102(2) (C) and the agency review process for which environmental statements are to be available, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State and local agencies and the public, . . .

(b) Each Federal agency should consult, with the assistance of the Council and the Office of Management and Budget if desired, with other appropriate Federal agencies in the development and revision of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities. Where applicable, State and local review of

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such agency procedures should be conducted pursuant to procedures established by Office of Management and Budget Circular No. A-85.

(c) Existing mechanisms for obtaining the views of Federal, State, and local agencies on proposed Federal actions should be utilized to the maximum extent practicable in dealing with environmental matters. The Office of Management and Budget will issue instructions, as necessary, to take full advantage of such existing mechanisms.

* * *

§ 1500.5 Types of actions covered by the Act.

(a) "Actions" include but are not limited to:

(1) * * *

(2) New and continuing projects and program activities: directly undertaken by Federal agencies; or supported in whole or in part through federal contracts, grants, subsidies, loans, or other forms of funding assistance (except where such assistance is solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et. seq. with no Federal agency control over the subsequent use of such funds); or involving a Federal lease, permit, license certificate or other entitlement for use.

(3) The making, modification, or establishment of regulations, rules, procedures, and policy.

§ 1500.6 Identifying major actions significantly affecting the environment.

(a) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be con-

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strued by agencies with a view to the overall, cumulative impact of the action proposed, related Federal actions and projects in the area, and further actions contemplated. Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases. . . .

(b) * * *

(c) Each of the provisions of the Act except section 102(2) (C), applies to all Federal agency actions. Section 102(2) (C) requires the preparation of a detailed environmental impact statement in the case of "major Federal actions significantly affecting the quality of the human environment." The identification of major actions significantly affecting the environment is the responsibility of each Federal agency, to be carried out against the background of its own particular operations. The action must be a (1) "major" action, (2) which is a "Federal action," (3) which has a "significant" effect, and (4) which involves the "quality of the human environment." The words "major" and "significantly" are intended to imply thresholds of importance and impact that must be met before a statement is required. The action causing the impact must also be one where there is sufficient Federal control and responsibility to constitute "Federal action" in contrast to cases where such Federal control and responsibility are not present as, for example, when Federal funds are distributed in the form of general revenue sharing to be used by State and local governments (see § 1500.5(ii)). Finally, the action must be one that significantly affects the quality of the human environment either by directly affecting human beings or by indirectly affecting human beings through adverse effects on the environment. . . .

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(d) (1) Agencies should give careful attention to identifying and defining the purpose and scope of the action which would most appropriately serve as the subject of the statement. In many cases, broad program statements will be required in order to assess the environmental effects of a number of individual actions on a given geographical area (e.g., coal leases), or environmental impacts that are generic or common to a series of agency actions . . .

(e) In accordance with the policy of the Act and Executive Order 11514 agencies have a responsibility to develop procedures to insure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. In furtherance of this policy, agency procedures should include an appropriate early notice system for informing the public of the decision to prepare a draft environmental statement on proposed administrative actions (and for soliciting comments that may be helpful in preparing the statement) as soon as is practicable after the decision to prepare the statement is made. . . .

EXECUTIVE ORDER 11514
35 FED. REG. 4247-4248 (March 7, 1970)

EXECUTIVE ORDER 11514
PROTECTION AND ENHANCEMENT OF
ENVIRONMENTAL QUALITY

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Section 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

Executive Order 11514

35 Fed. Reg. 4247-4248 (March 7, 1970)

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

Executive Order 11514

35 Fed. Reg. 4247-4248 (March 7, 1970)

Section 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of the procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with en-

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vironmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2) (C) of the Act.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Section 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

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“(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee.”

(5) By deleting subsection (c) of section 102.

(6) By substituting for “the Office of Science and Technology”, in section 104, the following: “the Council on Environmental Quality (established by Public Law 91-190)”.

(7) By substituting for “(hereinafter referred to as the ‘Committee’)”, in section 201, the following: “(hereinafter referred to as the ‘Citizens’ Committee’)”.

(8) By substituting for the term “the Committee”, wherever it occurs, the following: “the Citizens’ Committee”.

/s/ RICHARD NIXON

The White House,
March 5, 1970.

[F.R. Doc. 70-2861; Filed, Mar. 5, 1970; 2:29 p.m.]

**UNITED STATES POSTAL SERVICE
SPECIAL REGULATIONS —
ENVIRONMENTAL STATEMENT PROCEDURES
39 C.F.R. §775**

SUBCHAPTER K — SPECIAL REGULATIONS*

**PART 775 — ENVIRONMENTAL
STATEMENT PROCEDURES**

Sec.

- 775.1 Purpose and policy.
- 775.2 Definitions.
- 775.3 General responsibilities.
- 775.4 Determinations.
- 775.5 Major actions having no environmental impact.
- 775.6 Preparation of draft environmental statements.
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- 775.9 Preparation and distribution of final environmental statements.
- 775.10 Commencement of substantive action.
- 775.11 Applicability to recommended legislation.
- 775.12 Applicability to projects for construction of Postal Service facilities (Corps of Engineers).
- 775.13 Applicability to lease construction projects (Corps of Engineers).
- 775.14 Applicability to other major actions.

Exhibit I.

Exhibit II.

*37 FR 13322, July 6, 1972, as redesignated at 38 FR 14168, May 30, 1973.

*United States Postal Service Special Regulations—
Environmental Statement Procedures, 39 C.F.R. §775*

Authority: These provisions of Part 775 issued under 39 U.S.C. 401.

Source: 37 FR 13322, July 6, 1972, unless otherwise noted.

§775.1 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), as implemented by Executive Order 11514 and the Council on Environmental Quality's Guidelines of April 23, 1971 (36 F.R. 7724), requires preparation of detailed environmental impact statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the agency decisionmaking process an appropriate and careful consideration of all environmental aspects of proposed actions.

(b) To the extent that the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347), the Clean Air Act, as amended (42 U.S.C. 1857-1857-1), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1150 et seq.), the Solid Waste Disposal Act (42 U.S.C. 3251-3259), the Atomic Energy Act, as amended (42 U.S.C. 2011-2296), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.), the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 401 et seq.), and other Federal anti-pollution acts, are Federal laws "dealing with public or Federal contracts, property, works, * * *, budgets, or funds" within the meaning of section 410(a) of title 39, United States Code, they, and any Executive orders or other regulations based upon them, are inapplicable to the exercise of the powers of the Postal Service. However, it is the policy of the Postal Service to comply voluntarily with such statutes, orders, and regulations (including all State and local requirements made applicable to Federal agencies by virtue of, or pursuant to, Federal statutes)

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to the extent practical and feasible consistent with the public interest and fulfillment of the primary mission of the Postal Service. The foregoing general policy will be implemented in accordance with the following:

(1) At the earliest practicable stage in the planning process, the environmental consequences of any proposed major action shall be assessed.

(2) Actions that were initiated prior to the enactment of the National Environmental Policy Act of 1969 and for which the environmental consequences have not been assessed shall be reviewed to insure that any remaining action is consistent with the provisions of this Part 775.

(3) Insofar as practicable, and with appropriate consideration of assigned functions and of economic and technical factors, programs and actions shall be planned, initiated, and carried out in a manner to avoid adverse effects on the quality of the human environment. When this is not feasible, all reasonable measures shall be taken to neutralize or mitigate any adverse environmental impact of the actions.

(4) Whenever an environmental assessment of a proposal for legislation, or of a proposed or continuing major action, indicates under the criteria contained herein that the resulting action may significantly affect the quality of the human environment or may be highly controversial with regard to environmental impact, a detailed environmental impact statement shall be prepared and processed pursuant to the guidance herein contained or referenced. [37 FR 13322, July 6, 1972 as amended at 40 FR 26511, June 24, 1975]

§775.2 Definitions.

(a) "Environmental assessment" is an evaluation process to determine whether a proposed major action is expected to have a significant impact on the environment.

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(b) "Negative declaration" is a written description of a proposed action, its expected environmental impact, and the basis for the conclusion that no significant adverse impact on the environment is anticipated if the proposed action is undertaken.

(c) "Environmental impact statement" is a report which identifies and analyzes in detail the environmental impacts of a proposed action.

(d) "Responsible official" is the head of a Postal Service organizational unit in headquarters or in the field who has been authorized to initiate proposals for legislation, programs, activities, or projects, or who promulgates rules, regulations, and instructions.

§775.3 General responsibilities.

(a) *Responsible officials.* (1) Each responsible headquarters or field official is responsible for the following (except to the extent otherwise provided in §§775.12 and 775.13 with respect to projects administered by the Corps of Engineers):

(i) Determining whether or not a proposed action is a major action under the criteria set forth in §775.4;

(ii) For each major action, the assembly of all necessary information for, and the preparation of, an environmental assessment, identifying significant environmental impact (if any);

(iii) Preparation of either a negative declaration or the draft and final impact statements as required in accordance with the provisions of this Part 775;

(iv) Publicizing each proposed major action that results in a significant environmental effect, after determining the extent to which it should be publicized and the appropriate methods, in accordance with §775.8;

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(v) Reevaluating each major action in the light of comments received from Federal, State, and local entities, and private organizations and individuals; and

(vi) Forwarding copies of draft and final impact statements to the Office of Program Management, U.S. Postal Service, for internal distribution and for circulation to other Federal agencies, in accordance with §§775.7 and 775.9.

(2) In addition to the foregoing, each responsible field official shall be responsible for:

(i) Circulating draft and final environmental statements on delegated programs, projects, and activities to State and local entities to secure their views (except for projects administered by the Corps of Engineers); and

(ii) Conducting all necessary liaison with the Corps of Engineers on all field projects administered by the corps.

(3) Each responsible official of the Postal Service shall, in all cases (except for projects administered by the Corps of Engineers), consider the environmental assessment, negative declaration, or draft or final environmental impact statement, as the case may be, in determining whether or not to propose legislation or undertake a program, activity or project that has been identified as a major action. On projects to be administered by the corps, he shall consider all information and data which can reasonably be assembled by the Postal Service and which is of a nature which would ordinarily be evaluated in making a Postal Service environmental assessment. Thereafter, in all cases, he shall consider the draft or final environmental impact statement, as the case may be, at each succeeding stage (if any) where an overall balancing of environmental impact factors against other considerations is appropriate and where alterations in the major action can be made.

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(b) The Office of Program Management will:

(1) Upon receipt of draft impact statements from responsible headquarters or field officials, circulate copies to, and secure comments from other Federal agencies (except for projects administered by the Corps of Engineers);

(2) In addition to the foregoing, secure comments of State and local entities on draft impact statements received from responsible headquarters officials (except on projects administered by the Corps of Engineers);

(3) Provide liaison with the Council on Environmental Quality and the Environmental Protection Agency (EPA) as necessary in connection with major actions in headquarters and in the field;

(4) Act as the point of contact between headquarters and the Corps of Engineers with respect to environmental matters;

(5) Distribute final impact statements prepared in headquarters to the Council on Environmental Quality and agencies, organizations, or individuals from whom comments were received;

(6) Make appropriate internal distribution of all environmental impact statements prepared by responsible headquarters or field officials and by the Corps of Engineers; and

(7) Monitor overall timeliness and quality of Postal Service compliance with this part.

(c) The Government Relations Department will provide such liaison with Congress as may be necessary.

(d) The Department of Communications and Public Affairs will provide the requisite public information through press releases and will answer queries on impact statements.

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§775.4 Determinations.

The determination of what is a "major action significantly affecting the quality of the human environment" is in large part a matter of judgment, based on an assessment of the circumstances of the proposed action.

(a) Major actions which require environmental impact statements include:

(1) Recommendations on legislation authorizing programs or activities which would have a significant environmental impact;

(2) Any Postal Service program, activity or project which will have an actual or probable impact on the quality of human environment;

(3) Promulgation of rules, regulations, and instructions which would affect the environment; and

(4) Any proposed action which is likely to be environmentally controversial.

(b) Actions significantly affecting the human environment can be construed to be those that:

(1) Degrade environmental quality even if beneficial effects outweigh the detrimental ones;

(2) Curtail range of possible beneficial uses of the environment including irreversible and irretrievable commitments of resources;

(3) Serve short term rather than long-term environmental goals;

(4) May be localized in their effect, but nevertheless, have a harmful environmental impact; or

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(5) Are attributable to many small actions, possibly taken over a period of time, that collectively have an adverse impact on the environment.

(c) Environmental subject areas include, but are not limited to:

(1) Actions which directly and indirectly affect human beings through water, air, and noise pollution, undesirable land use patterns, solid waste disposal, pesticide and herbicide use, and transportation and handling of hazardous materials;

(2) Human population distribution changes and its effect upon urban congestion (including vehicular traffic), water supply, sewage treatment facilities, other public services, and threats to health; and

(3) Ecological systems such as wildlife, fish, and other marine life.

§775.5 Major actions having no environmental impact.

If a proposed major action is determined not to affect significantly the quality of the human environment and not to warrant the preparation of an environmental statement, the organization administering the program or activity, shall prepare a negative declaration and transmit 10 copies to the Office of Program Management for internal distribution.

§775.6 Preparation of draft environmental statements.

(a) It is advisable, in the early stages of drafting an environmental statement, to consult with those Federal, State, and local agencies (including regional and metropolitan clearing-houses) which either possess environmental expertise on potential impacts of a proposed action or are responsible for planning development. This will assist in providing the

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necessary data and guidance for the analyses required to be included in environmental statements.

(b) Each environmental statement shall be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." Each statement must reflect that the particular economic and technical benefits of its proposed action have been assessed and then weighed against the environmental costs.

(c) Environmental impact statements shall contain:

(1) A description of the proposed action, including the information and technical data adequate to permit a careful evaluation of the environmental impact of proposed action by commenting agencies. If appropriate, three copies of site maps and topographic maps at suitable scales showing the property and the surrounding area shall be provided.

(2) The probable impact of the proposed action on the environment, including impact of ecological systems such as wildlife, fish, and marine life. Consequences of direct and indirect impacts on the environment shall be included in the analysis. For example, any effect of the action on population distribution or concentration shall be estimated and an assessment made of the effect of any possible change in population patterns upon the resources of the area including land use, water supply, public services, and traffic patterns.

(3) Any probable adverse environmental effects that cannot be avoided, such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to

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health, or other consequences adverse to the environmental goals set out in section 101(b) of the Act.

(4) Section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." A rigorous exploration and objective evaluation of possible alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment shall accompany the proposed action through the agency review process so as not to prematurely foreclose consideration of options which might have less detrimental effects.

(5) The relationship between local short term uses of man's environment and maintenance and enhancement of long-term productivity shall be discussed. This in essence requires evaluation of the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(6) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented shall be considered. Identify the extent to which the action curtails the range of beneficial uses of the environment.

(7) The economic and environmental costs and benefits of the proposed action must be balanced. Alternate courses of action must be discussed as to their effect upon this cost and benefit balance. If a formal cost-benefit analysis on the proposed action is prepared, it shall be submitted with the statement.

(d) Environmental statements shall be in the following format:

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(1) Draft and final environmental statements shall be prepared on 8-1/2" x 11" paper in clear black type;

(2) A cover sheet and summary sheet shall be prepared in accordance with the format illustrated in exhibits I & II below, and shall be attached to the environmental statement.

§ 775.7 Submission and distribution of draft environmental statements.

(a) Where draft environmental statements are prepared by a responsible official of the Postal Service, 30 copies shall be transmitted to the Office of Program Management for distribution.

(b) On projects administered by the Corps of Engineers, the corps will distribute copies of draft environmental statements to Federal, State, and local agencies in accordance with its procedures and, in addition, shall send 10 copies to the Office of Program Management.

(c) Each Federal, State, and local agency furnished a copy of a draft environmental statement by the Office of Program Management and each State or local agency furnished a copy by a responsible field official shall be allowed 30 calendar days in which to submit comments (except that EPA shall be given 45 calendar days) and shall be advised that if no reply is received within the specified period, it will be presumed that there is no objection to the draft statement. The transmittal letters shall also indicate that the statement is based on information currently available. In the case of a major activity being undertaken by field organizational unit, the Office of Program Management shall, promptly after expiration of the 30-day and 45-day time limits respectively, transmit to the responsible field official copies of all comments received from Federal agencies or a report that no comments were received.

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§ 775.8 Public information.

(a) The Council on Environmental Quality publishes notice in the Federal Register of each draft and final environmental impact statement. Except with respect to projects administered by the Corps of Engineers, the responsible headquarters or field official will take such additional action as may be appropriate in the circumstances of each case to provide further timely public information on a proposed major action, to promote public understanding, and to obtain the views of interested parties in accordance with this § 775.8.

(b) Copies of draft and final environmental impact statements, together with the comments received, shall be made available in accordance with the applicable provisions of Subchapter 260, Release of Information, Postal Service Manual. Copies of statements prepared in headquarters or by the corps on headquarters projects will be forwarded by the Office of Program Management to the Department of Communications and Public Affairs where they will be available for public review. The responsible field official will forward copies to the Regional Director of Communications and Public Affairs. Depending upon the nature of the major action, it may be appropriate to furnish copies to private organizations known to have an interest (such as citizen groups concerned with conservation, pollution, or other environmental matters).

(c) In the case of a project or activity to be undertaken in a particular locality, a local press release may be issued. On projects administered by the Corps of Engineers, press releases relating to environmental matters will be handled by the corps in accordance with its guidelines. In the case of a program, a press release may or may not be appropriate, depending upon the nature of the program.

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(d) The responsible official may (except in the case of projects administered by the Corps of Engineers) arrange for a public hearing when there is reason to believe it would facilitate the resolution of significant environmental controversy. In such event, the meeting shall be held no earlier than 15 days after the draft environmental statement has been made available to the public. A written notice of the time, date, and place of the meeting shall be sent to all Federal, State, and local governmental entities (including regional and metropolitan clearinghouses) that may wish to send a representative, and to all private organizations and individuals known to be interested. In addition, copies of the notice may be posted in appropriate public places such as local post offices; copies of the notice may also be sent to the local newspapers. The draft environmental impact statement may be used as an outline for the conduct of discussions. If, upon conclusion of the hearing, it appears that some elements of controversy remain unresolved, the submission of written comments should be solicited. Following the public hearing, a summary of the issues discussed, conflicts resolved, remaining unresolved objections, and any other significant aspects of the hearing shall be prepared and appended to the draft statement for incorporation as a separate section in the final environmental impact statement. When the final environmental impact statement has been prepared, a copy shall be furnished to each private individual and organization that submitted written comment following the public hearing.

§ 775.9 Preparation and distribution of final environmental statements.

Whenever a draft environmental statement has been prepared, a final environmental impact statement must also be prepared. The text of the draft will be revised as deemed appropriate in the light of comments received, and the comments will be appended.

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(a) Thirty copies of each final environmental impact statement prepared by the Postal Service, and of the comments received, shall be furnished to the Office of Program Management for distribution.

(b) On projects administered by the Corps of Engineers, the corps shall, in addition to distributing copies of final environmental impact statements to the Council on Environmental Quality and other organizations or individuals in accordance with its established procedures, furnish 10 copies, together with the original and two copies of all comments received, to the Office of Program Management.

§ 775.10 Commencement of substantive action.

(a) Except as otherwise provided in paragraph (b) of this section or elsewhere in this part, proposed legislation determined to constitute a major action shall not be forwarded to Congress, and substantive action to implement any other major action shall not be undertaken, sooner than 90 calendar days after a draft environmental statement has been furnished to the Council on Environmental Quality and circulated for comment, or sooner than 30 calendar days after the final environmental statement has been made available to the Council on Environmental Quality: *Provided, however,* That if the final environmental statement has been made available to the Council and the public early enough that the 30-day period will expire prior to the expiration of the 90-day period, substantive action may be commenced upon expiration of the 30-day period.

(b) The foregoing time requirements shall be followed to the maximum extent practical but need not be observed when (1) advance public disclosure of a proposed action will result in significantly increased costs to the Government; (2) emergency circumstances make it necessary to proceed without conforming to time requirements; (3) effectiveness of the major action

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would be impaired if such time requirements were observed; (4) it is not otherwise "practical and feasible consistent with the public interest and fulfillment of the primary mission of the Postal Service."

§ 775.11 Applicability to recommended legislation.

Prior to recommending that the Postal Service seek enactment of legislation determined to constitute major action, the responsible official shall have an environmental assessment made. If the assessment results in a negative declaration, the negative declaration shall be attached when the recommendation is forwarded for consideration within the Postal Service. If the recommended legislation is determined to require preparation of an environmental impact statement, he shall, prior to forwarding his recommendation, have a draft environmental statement prepared and circulated for comment in accordance with the requirements of this part. He shall initiate such public information actions as are appropriate considering the nature of the legislation contemplated. Ordinarily a recommendation for legislation which constitutes a major action shall be sent to Congress or to the Office of Management and Budget (as the case may be) with the final environmental impact statement, or, failing that, with at least the draft statement and any comments received thereon. In the event that the scheduling of hearings or other equally compelling reasons necessitate submission of the legislative recommendation prior to completion of either a draft or final environmental statement, the recommendation may be forwarded with a statement that an environmental impact statement and accompanying comments will be submitted as soon as possible thereafter.

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**§ 775.12 Applicability to projects for construction of
Postal Service facilities (Corps of Engineers).**

On projects, administered by the Corps of Engineers, for the construction or major alteration of Postal Service facilities, the corps will follow its procedures, in accordance with the March 11, 1971, agreement between the two organizations, except to the extent that certain functions must be performed by the Postal Service. The following outlines the functions to be performed by each.

(a) The responsible Postal Service official shall cause to be assembled all data available within the Postal Service which will be pertinent to preparation of assessments and draft and final environmental impact statements (for example, the number of personnel to be employed in the facility, public and employee parking requirements, projected vehicular traffic volume or any special factors inherent in the nature of the function to be performed in the facility). If the views of any Federal, State, or local agencies or private organizations or persons are known, these should be appended. All such information must be considered by the responsible official in determining whether or not to initiate the projects.

(b) When an authorization is issued to the Corps of Engineers, it shall be accompanied by the information and data assembled by the Postal Service and considered by the responsible official.

(c) After receipt of an authorization and accompanying information and data, the Corps of Engineers will follow its procedures in preparing, coordinating and publicizing environmental statements except to the extent specified below.

(d) When an environmental problem is identified in the course of preparing draft and final environmental impact

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statements, the responsible Postal Service official shall determine whether or not to proceed with the project as planned or whether to adopt alternatives that may mitigate or eliminate the problem identified.

(e) In making final site selection, the responsible Postal Service official shall consider all available environmental information obtained by the Corps of Engineers with respect to each available site.

**§ 775.13 Applicability to lease construction projects
(Corps of Engineers).**

A lease construction project of less than 50,000 square feet will not be considered a major action requiring an environmental impact statement unless:

(a) It entails a use which is likely to have an adverse impact on the quality of the human environment.

(b) Preparation of an impact statement is a state or local requirement.

(c) It is environmentally controversial.

In all other respects, the procedures outlined in §775.12 are applicable to lease construction projects.

§ 775.14 Applicability to other major actions.

With respect to all actions other than legislation and projects administered by the corps, the normal sequence in which the requirements of this Part 775 will be carried out are as follows:

(a) The Postal Service official or employee developing a proposed action for consideration by a responsible official shall make a preliminary determination as to whether the action constitutes a major action.

(b) If the action contemplated is determined to constitute a major action, he shall make an environmental assessment.

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(c) Upon completion of the environmental assessment, he shall prepare either a negative declaration or a draft environmental impact statement.

(d) A proposed major action for which a negative declaration has been prepared will be forwarded for consideration by the responsible official who shall review, in conjunction with the proposed action itself, the preliminary determination that it is a major action and the negative declaration.

(e) Where the environmental assessment requires preparation of a draft environmental impact statement, all information and data necessary for preparation of the draft will be assembled and the statement will be drafted.

(f) The proposal and the draft statement may then be forwarded to the responsible official for his initial consideration of the proposal itself in the light of the draft environmental impact statement, or this step may be postponed until after comments have been received as a result of circulating and publicizing the draft. Ordinarily, the responsible official should make the decision as to whether a public hearing is appropriate after reviewing the proposal, the draft impact statement and comments received from other governmental organizations.

(g) After the draft environmental impact statement has been prepared, it will be circulated for comment to other Federal, State, and local agencies and private organizations and individuals. If the responsible official determines that public hearing is appropriate, the hearing will be held.

(h) Whether the proposed action with the draft environmental statement has been previously forwarded to the responsible official or not, it will be forwarded after receipt of comments for determination by the responsible official as to whether or not the proposed action will be initiated and, where

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appropriate, whether or not to adopt any alternative that would lessen or eliminate an adverse environmental impact.

(i) A final environmental impact statement will be prepared in the light of the comments received on the draft and the decision of the responsible official as to initiation of the action and any alternatives.

(j) The final environmental impact statement will be distributed in accordance with these regulations.

(k) At each succeeding stage in implementation of the major actions where changes can be made to abate remaining adverse environmental impact factors (if any), the responsible official shall review the environmental impact statement and make determinations as appropriate.

**INTERGOVERNMENTAL COOPERATION
ACT OF 1968**

PUBLIC LAW 90-577; 82 STAT. 1098

[S. 698]

An Act to achieve the fullest cooperation and coordination of activities among the levels of government in order to improve the operation of our federal system in an increasingly complex society, to improve the administration of grants-in-aid to the States, to permit provision of reimbursable technical services to State and local government, to establish coordinated intergovernmental policy and administration of development assistance programs, to provide for the acquisition, use, and disposition of land within urban areas by Federal agencies in conformity with local government programs, to provide for periodic congressional review of Federal grants-in-aid, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act be cited as the "Intergovernmental Cooperation Act of 1968".

TITLE I—DEFINITIONS

When used in this Act—

FEDERAL AGENCY

Sec. 101. [42 U.S.C. §4201] The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

* * *

Sec. 401 [42 U.S.C. §4231] (a) The economic and social development of the Nation and the achievement of satisfactory

levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of smaller communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

- (1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;
 - (2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;
 - (3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;
 - (4) Adequate outdoor recreation and open space;
 - (5) Protection of areas of unique natural beauty, historical and scientific interest;
 - (6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and
 - (7) Concern for high standards of design.
- (b) All viewpoints — national, regional, State, and local — shall, to the extent possible, be fully considered and taken into

Intergovernmental Cooperation Act of 1968

account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(c) to the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

Sec. 402 [42 U.S.C. §4232] Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans

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or grants-in-aid to units of general local government rather than to special-purpose units of local government.

Sec. 403. [42 U.S.C. §4233] The Bureau of the Budget or such other agency as may be designated by the President is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title.

**OFFICE OF MANAGEMENT AND BUDGET
REVISED CIRCULAR A-95
38 FED. REG. 32874-32880 (NOVEMBER 28, 1973)**

Part I — Project Notification and Review Systems

1. *Purpose.* The purpose of this part is to:

a. Further the policies and directives of title IV of the Intergovernmental Cooperation Act of 1968 by encouraging the establishment of a network of State and areawide clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

b. * * *

c. Implement, in part, requirements of section 102(2)(c) of the National Environmental Policy Act of 1969, which require that State, areawide, and local agencies which are authorized to develop and enforce environmental standards be given an opportunity to comment on the environmental impact of Federal or federally assisted projects.

d. Provide public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to participate in the review process established under that Part.

e. Encourage, by means of early contact between applicants for Federal assistance and State, and local governments, and agencies, an expeditious process of intergovernmental coordination and review of proposed projects.

Office of Management and Budget Revised Circular A-95
38 Fed. Reg. 32874-32880 (November 28, 1973)

Part II — Direct Federal Development

1. Purpose. The purpose of this Part is to:

a. Provide State and local government with information on projected Federal development so as to facilitate coordination with State, areawide, and local plans and programs.

b. Provide Federal agencies with information on the relationship of proposed direct Federal development projects and activities to State, areawide, and local plans and programs; and to assure maximum feasible consistency of Federal developments with State, areawide, and local plans and programs.

c. Provide Federal agencies with information on the possible impact on the environment of proposed Federal development.

2. Coordination of direct Federal development projects with State, areawide, and local development.

a. Federal agencies having responsibility for the planning and construction of Federal building and construction of Federal buildings and installations or other Federal public works or development or for the regulation, use, and disposal of Federal land and real property will establish procedures for:

(1) Consulting with Governors, State and areawide clearinghouses, and local elected officials at the earliest practicable stage in project or development planning on the relationship of any plan or project to the development plans and programs of the State, area, or locality in which the project is to be located.

* * *

Office of Management and Budget Revised Circular A-95
38 Fed. Reg. 32874-32880 (November 28, 1973)

3. Use of clearinghouses. The State and areawide planning and development clearinghouses established pursuant to Part I will be utilized to the greatest extent practicable to effectuate the requirements of this Part. Agencies are urged to establish early contact with clearinghouses to work out arrangements for carrying out the consultation and review required under this Part, including identification of types of projects considered appropriate for consultation and review.

Part V — Definitions

Term used in this Circular will have the following meanings:

1. *Federal Agency*. Any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

2. Planning and development clearinghouses includes:

(a)

(b) *Areawide clearinghouse* (1) In non-metropolitan areas a comprehensive planning agency designated by the Governor . . . or by State law to carry out the requirements of this Circular; or

(2) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under . . . this Circular.

Affidavit of Service

Monroe County's
Business/Legal Daily Newspaper
Established 1908

11 Centre Park
Rochester, New York 14608
Correspondence P.O. Box 6, 14601
(716) 232-6920

Johnson D. Hay/Publisher
Russell D. Hay/Board Chairman

The Daily Record

May 14, 1976

Re: City of Rochester and Genesee-Finger Lakes Regional
Planning Board v United States Postal Service etc.

State of New York)
County of Monroe) ss.:
City of Rochester)

Johnson D. Hay
Being duly sworn, deposes and says: That he is associated with The Daily Record
Corporation of Rochester, New York, and is over twenty-one years of age.

That at the request of

Goldstein, Goldman, Kessler & Underberg, Larry A. Stumpf, Esq.

Attorney(s) for

City of Rochester and Genesee-Finger Lakes Regional Planning Board

On May 14, 1976
(s)he personally served ~~three (3)~~ ^{two (2)} copies of the printed ☐ Record ☐ Brief ☐ Appendix
of the above entitled case addressed to:

- (1) Appendix
- (1) Exhibit Book
- (3) Briefs

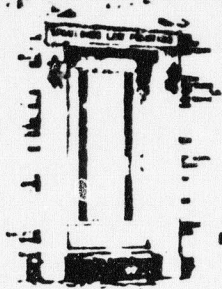
Gerald J. Houlihan
Assistant United States Attorney
U. S. Court House Federal Building
Rochester, New York

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☒ By hand delivery

Sworn to before me this 14th day of May 1976

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LETTER OF TRANSMITTAL

Date: May 14, 1976

Hon. A. Daniel Fusaro, Clerk
U. S. Court of Appeals, Second Circuit
Room 1702 U. S. Court House
Foley Square
New York, NY 10007

Re: City of Rochester, et al. v. United States Postal Service, et al.

~~Index No.~~ Docket No. 76-6065

Dear Sir:

Enclosed please find copies of the above entitled for filing as follows:

[10] Appendix

[4] Exhibit Books

~~xxx Original Record enclosed~~

~~xxx Original Record to come~~

Very truly yours,

Everett J. Rea
Everett J. Rea

cc: Goldstein, Goldman, Kessler,
& Underberg, Esqs.